

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL

WRIT PETITION NO. 350 OF 2002

Old No. 43533 of 1997

Rama Kant Srivastava, son of Sri A.P. Srivastava , resident of
Arvind Marge, Dehradun. Petitioner

Versus

1. District Inspector of Schools, Dehradun,
2. Accounts Officer of District Inspector of Schools,
Dehradun.
3. Committee of Management, D.A.V. Intermediate College,
Dehradun, through its Manager Sri Nagendra Swaroop.
.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Ram Ji Srivastava, counsel for the petitioner
and Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for a
writ of certiorari quashing the order dated 20.10.1997
(Annexure No. 1 to the writ petition) passed by the respondent
no. 1.

Briefly stated, the petitioner is working as an LT grade
teacher and getting the salary of LT grade teacher.

The petitioner has submitted that the principal of the
college namely Sri V.K. Verma retired on 30th June, 1995 and
therefore, a vacancy arose for the post of principal in the
Institution.

Petitioner has further submitted that on 31st July, 1990,
two posts of lecturer and two posts of L.T. grade teacher were
directed to be filled up by the District Inspector of Schools and

therefore, the posts were advertise in the newspaper on 18th August, 1990.

Further it has come on the record that on 5th August, 1991, the principal of the Institution has sent a letter to the District Inspector of Schools for approval of new appointees including the petitioner and further a reminder was sent on 19th August, 1991 for granting approval to newly appointed teachers and lecturers but the said order has not yet been complied with.

However, the petitioner has been appointed as an ad-hoc teacher on 21st August, 1991, he joined the same on 22.11.1991 and the salary bill of the petitioner was also sent on 04.01.1992 before the District Inspector of Schools for his approval but no payment has been made.

However, petitioner approached the Allahabad High Court on 04.02.1992 by filing the writ petition. The order was passed to the following effect:-

‘The learned Standing Counsel prays for and is granted four weeks’ time to file counter affidavit on behalf of the respondents 1,2 and 3 for whom he has accepted notices of the petition. The petitioner to serve respondent no. 4 within two weeks from today personally. Office extends all cooperation by preparing papers and the notices to state that the petition will be listed on the 24th of March, 1992, by which time the respondent may keep their counter affidavit ready on the basis that if appropriate and found convenient, the petition may be taken up for hearing and final disposal in accordance with the Rules of this Court.

Mr. Arun Tandon has invited attention to the order passed by my brother M.P. Singh, J. in the matter of one of the Colleges as of the petition, whose matter stood on identical footing, according to Mr. Tandon. In the interest of committee,

I follow the same order and direct that the interim mandamus be issued directing respondent no.3 whether to pay the salary of the petitioner for the period 22nd of November, 1991 to the 31st of December, 1991 and the salary accruing thereafter from month to month within four weeks of the receipt of a certified copy of this order on them or to show cause.”

The representation of the petitioner, however, has been rejected on the ground that the post of lecturer is not substantially vacant and are itself temporary vacant and therefore, promotion of the petitioner as physics lecturer is not possible.

Counsel for the petitioner has submitted that the petitioner is still working and he is entitled for the promotion.

He has referred the judgment of Allahabad High Court in the case of Onkar Singh v. Director of Schools, Varanasi (H.C.) A.L.R. 1992 (19) page 178, where it has been held:-

“In the present case, there is no dispute that on the date of occurrence of vacancy, the petitioner possessed the minimum qualification as also he has put in five years’ continuous service as Teacher in L.T. grade. The respondent cannot treat the petitioner’s appointment as illegal merely because he has not put in five years’ continuous substantive service in L.T. Grade for ad hoc promotion to Lecturer’s Grade. Thus, for ad hoc appointment under Section 18(1)(b) of the U.P. Secondary Education Services Commission and Selection Boards Act, neither U.P. Secondary Education Services Commission Rules have laid down any such condition nor in the Removal of Difficulties Order, there is any requirement.

The learned Standing counsel, however, pointed out that under Paragraph 6 Sub-Clause (c) of the Removal of Difficulties Order, it has been laid down that appointment by

promotion under Prara 4 can be made only by candidate who has served the Institution in substantive capacity from before the date of commencement of this order. On a reading of Sub-Clauses (c) of Paragraph 6 of the Removal of Difficulties Order, this argument is liable to be repelled. Sub-Clause (c) provides:

“(C) the candidate sought to be appointed by promotion under paragraph 4 must have been serving the institution in substantive capacity from before the date of commencement of this Order.”

It appears that this provision was enacted in the Removal of Difficulties Order considering that after the Services Commission comes into operation there would be no requirement of ad hoc appointments. This provision did not cater for the contingency in respect of those ad hoc appointments which were made much after the enforcement of the Removal of Difficulties Order. In my opinion, this provision would not be applicable to the present case and the ad hoc appointment of the petitioner has been made in accordance with law and the petitioner is entitled to his salary from the date of his appointment in case he has been performing his duties on the post.

The petition is liable to succeed and is hereby allowed. The respondents are directed to pay the petitioner's salary on the post of Lecturer from the date of his appointment in case the same has not been paid to him and in case he has performed his duties on the post of Lecturer in Hindi. It is made clear that the appointment of the petitioner will last till a regularly selected candidate is sent for appointment or is otherwise terminated in accordance with law. There shall be no order as to costs”

In view of the above, the respondent no. 1 District Inspector of Schools is directed to decide the claim of the petitioner in accordance with law afresh in the light of the order passed above. The order passed by the DIOS on 20.10.1997 therefore, in the circumstances may not come in the way while deciding the case of the petitioner afresh.

Subject to the aforesaid observation, the writ petition is disposed of.

25.11.2004
P.S.R.

(RAJESH TANDON, J.)